IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

RP.No. 1003 of 2007(A)

IN W.P.C.15965/2006

REVIEW PETITIONER/1ST RESPONDENT:

STATE OF KERALA, REP. BY
SECRETARY TO LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. C.M. SURESH BABU.

RESPONDENTS: PETITIONER & RESPONDENTS 2 & 3:
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1. TCS TEXTILES PVT. LTD.,
558-560 OPPANAKKARA STREET, COIMBATORE-611 001,
HAVING ITS OFFICE AT I-B PAUL ABRAVO RESIDENCY
(RDS), CHITTOOR ROAD, KACHERIPPADY, KOCHI-682 018,
REPRESENTED BY ITS DULY AUTHORIZED
PROJECT MANAGER.

2. THE CORPORATION OF COCHIN,
REP. BY THE SECRETARY, ERNAKULAM.

3. THE TOWN PLANNING OFFICER,
CORPORATION OF COCHIN, KOCHI-11.

R1 BY ADV. SRI. JOBY JACOB PULICKAKUDY.
R2 & R3 BY ADV. SRI. M.K.CHANDRAMOHAN DAS.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, ALONG WITH COC. 1408/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.M.JOSEPH, J.

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R.P. No.1003/2007 in WP.(C). 15965/2007
& Cont. Case (C) 1408 of 2007.

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Dated this the 28th day of November, 2007

ORDER

This court by judgment dated 30.5.2007 followed Ext.P6 judgment produced therein and quashed Ext.P5 in so far as the application of the petitioner was rejected on the ground of FAR. The second respondent was directed to consider and take a decision in accordance with law within a period of one month. It was stated that the other reasons for passing Ext.P6 will hold good. Petitioner has filed Contempt of Court Case alleging that the judgment has not been complied with. In the meantime a review petition is filed by the State of Kerala.

2. I heard learned Government Pleader appearing for the petitioner, learned counsel for the first respondent (petitioner in the Contempt of Court Case) and the learned counsel for the Corporation.

3. Learned Government Pleader would point out in support of his application for review that the State Government has decided in principle to establish Metro Rail Project at Kochi. A detailed report

has been submitted by the Delhi Metro Rail Corporation. Having regard to the fast development of the Kochi city, urgent steps are being taken for developing mass rapid transit system. It is stated that the review petitioner could not file any counter affidavit in the writ petition and submit necessary details of the Kochi Metro Rail Project. It is submitted by the learned Government Pleader that the judgment came to be passed essentially on the basis of an interim order passed in the case. It is pointed out by him that a review petition was filed in regard to the interim order passed before the learned Judge and the learned Judge has passed an order to the effect that the petitioner therein will have to give an undertaking to the effect that if notification under Section 4(1) of the Land Acquisition Act is issued on or before 31.12.2008, the petitioner would not be entitled to any compensation for the building, which is permitted to be constructed. He submits that the same course may be followed in this case also. It is not in dispute that the petitioner in the writ petition has filed an affidavit to the effect that if notification under Section 4(1) of the Act is published within a period of 18 months, no compensation will be claimed by him in

respect of the construction made. The period of 18 months covered by the undertaking given by the petitioner would expire on 13.10.2008. The essential grievance of the Government is that more time is necessary in the nature of the project envisaged and it is in public interest that the project comes into force and the Government may not be burdened with heavy compensation, which will put them into great prejudice.

4. Having regard to all facts, the review petition is disposed of directing that in place of the undertaking to last for a period of 18 months, the petitioner in the writ petition has to give an undertaking that he will not claim any compensation for any construction made pursuant to the permit to be issued by the Corporation if a notification under Section 4(1) of the Land Acquisition Act is issued on or before 31.12.2008.

As regards the Contempt of Court Case is concerned, learned counsel for the respondents submits that the judgment will be complied with within a period of three weeks from today. However, I make it clear that this is subject to the petitioner in the writ petition

filing an undertaking as contemplated in the order in R.P.1003 of 2007 within two weeks from today.

(K.M. JOSEPH, JUDGE)

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